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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

v.

BROTHERS MACHINE & TOOL, INC.;  
CHASIN TRUST; HANSON TRUST;  
SEARING REVOCABLE TRUST;  
LUCILLE F. FERRIS LIVING TRUST;  
JOHN I. MAPLE FAMILY  
PARTNERSHIP; THOMAS J. MERSITS;  
IRENE L. MERSITS TRUST; DAVID  
JOSEPH NEPTUNE FAMILY TRUST;  
O.R.P. LLC; DANNY R. PEOPLES AND  
DENA PEOPLES; EDDIE E. TIMMONS;  
EUGENE GERALDINE WELTER  
TRUST; GRAZIANO TRUST; LOS  
NIETOS PROPERTY LLC; AND JOVITA  
L. ORTEGA

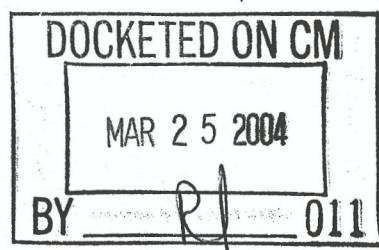
Defendants.

LACV03-7406

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CIVIL ACTION NO. \_\_\_\_\_

CONSENT DECREE



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1 I. BACKGROUND

2 A. The United States of America ("United States"), on behalf of the Administrator of  
3 the United States Environmental Protection Agency ("EPA"), has concurrently filed a complaint  
4 in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response,  
5 Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.  
6

7 B. The United States in its complaint seeks, inter alia: performance of certain  
8 response work by the defendants at the Waste Disposal, Inc. ("WDI") Superfund Site in Santa Fe  
9 Springs, California, consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as  
10 amended) ("NCP").

11 C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C.  
12 § 9621(f)(1)(F), EPA notified the California Department of Toxic Substances Control ("DTSC")  
13 and the California Hazardous Substances Account on April 10, 2001, of negotiations with  
14 potentially responsible parties regarding the implementation of the remedial design and remedial  
15 action for the Site, and EPA has provided DTSC with an opportunity to participate in such  
16 negotiations and be a party to this Consent Decree.  
17

18 D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA  
19 notified the National Oceanic and Atmospheric Administration, the U.S. Department of the  
20 Interior, the California Environmental Protection Agency, the California Department of Toxic  
21 Substances Control, the California State Water Resources Control Board, the California  
22 Resources Agency, the California Department of Fish and Game, and the California State Lands  
23 Commission on October 5 and 9, 2001 of negotiations with potentially responsible parties  
24 regarding the release of hazardous substances that may have resulted in injury to the natural  
25 resources under Federal or State trusteeship and encouraged the trustees to participate in the  
26 negotiation of this Consent Decree.  
27

E. The defendants that have entered into this Consent Decree ("Settling Defendants")

1 do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in  
2 the complaint, nor do they acknowledge that the release or threatened release of hazardous  
3 substances at or from the Site constitutes an imminent or substantial endangerment to the public  
4 health or welfare or the environment.

5 F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on  
6 the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the  
7 Federal Register on July 22, 1987, 52 Fed. Reg. 27620.

8  
9 G. In response to a release or a substantial threat of a release of hazardous substances  
10 at or from the Site, EPA commenced, on December 22, 1987, a Remedial Investigation and  
11 Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. EPA completed a  
12 Remedial Investigation ("RI") Report in November, 1990 and completed a Feasibility Study  
13 ("FS") in 1993. EPA signed a Record of Decision ("ROD") for the Site in 1993. EPA  
14 determined that subsequent investigation and design activities indicated a need to revise the  
15 remedy and EPA and certain potentially responsible parties ("PRPs") undertook additional RI/FS  
16 activities.

17 H. Certain PRPs completed a Supplemental Feasibility Study ("SFS") Report in May,  
18 2001.

19  
20 I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of  
21 the completion of the SFS and of the proposed plan for remedial action on May 31, 2001, in a  
22 major local newspaper of general circulation. EPA provided an opportunity for written and oral  
23 comments from the public on the proposed plan for remedial action. A copy of the transcript of  
24 the public meeting is available to the public as part of the administrative record upon which the  
25 Regional Administrator based the selection of the response action.

26 J. The decision by EPA on the remedial action to be implemented at the Site is  
27 embodied in a final Amended Record of Decision ("Amended ROD"), executed on June 21,

1 2002, on which DTSC has given its concurrence. The Amended ROD includes a responsiveness  
2 summary to the public comments. Notice of the final plan was published in accordance with  
3 Section 117(b) of CERCLA.

4 K. The Parties recognize, and the Court by entering this Consent Decree finds, that  
5 this Consent Decree has been negotiated by the Parties in good faith and implementation of this  
6 Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated  
7 litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public  
8 interest.

9  
10 NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

11 II. JURISDICTION  
12

13 1. This Court has jurisdiction over the subject matter of this action pursuant to 28  
14 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has  
15 personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent  
16 Decree and the underlying complaints, Settling Defendants waive all objections and defenses that  
17 they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall  
18 not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce  
19 this Consent Decree.

20 III. PARTIES BOUND  
21

22 2. This Consent Decree applies to and is binding upon the United States and upon  
23 the Settling Defendants and their heirs, successors and assigns. Any change in ownership or  
24 corporate status of Settling Defendants including, but not limited to, any transfer of assets or real  
25 or personal property, shall in no way alter Settling Defendants' responsibilities under this  
26 Consent Decree.  
27

#### IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Amended Record of Decision" or "Amended ROD" shall mean the EPA Amended Record of Decision relating to the Site, signed on June 21, 2002, by the Regional Administrator, EPA Region IX, or his/her delegate, and all attachments thereto. The Amended ROD is attached as Appendix A.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XX). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"DTSC" shall mean the California Department of Toxic Substances Control and any of its successor departments or agencies.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 60.

"Environmental Restriction Covenant" shall mean a restrictive covenant under California

1 law, running with the land, that (i) grants a right of access for the purpose of conducting any  
2 activity related to this Consent Decree, including, but not limited to, those activities listed in  
3 Paragraph 9.a of this Consent Decree; (ii) grants the right to the WDIG Site Trust to enforce the  
4 land/water use restrictions listed in Paragraph 10.a of this Consent Decree, or other restrictions  
5 that EPA determines are necessary to implement, ensure non-interference with, or ensure the  
6 protectiveness of the remedial measures to be performed pursuant to the Amended ROD; and (iii)  
7 provides that EPA and DTSC shall be third party beneficiaries of the environmental restriction  
8 covenant with rights to enforce the environmental restriction covenant; and (iv) is in substantially  
9 the form of Appendix C.

10 "EPA" shall mean the United States Environmental Protection Agency and any successor  
11 departments or agencies of the United States.

12  
13 "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous  
14 Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42  
15 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

16  
17 "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral  
18 or an upper case letter.

19 "Parties" shall mean the United States and the Settling Defendants.

20  
21 "Plaintiff" shall mean the United States.

22 "Property" shall mean that portion of the WDI Superfund Site owned by Settling  
23 Defendants and described more particularly in Appendix D.

24  
25 "Remedial Action" shall mean those activities to be undertaken by Settling Defendants to  
26 implement the Amended ROD.

27 "Response Actions" shall mean any and all removal and remedial actions and all  
enforcement activities related thereto.

1 "Response Costs" shall mean all costs, including, but not limited to, direct or indirect  
2 costs, that the United States has paid or will pay in connection with the Site, that are not  
3 inconsistent with the NCP, and all necessary costs that any other person has paid or will pay in  
4 connection with the Site that are consistent with the NCP.

5 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 *et*  
6 *seq.* (also known as the Resource Conservation and Recovery Act).

7 "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

8 "Settling Defendants" shall mean the Graziano Trust, Los Nietos Property, LLC. and  
9 Jovita L. Ortega.

10 "Site" shall mean the WDI Superfund Site, located at Los Nietos Road at Greenleaf  
11 Avenue in Santa Fe Springs, Los Angeles County, California, and depicted generally on the map  
12 attached as Appendix B.

13 "State" shall mean the State of California.

14 "United States" shall mean the United States of America.

15 "Waste Material(s)" shall mean (1) any "hazardous substance" under Section 101(14) of  
16 CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42  
17 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C.  
18 § 6903(27); (4) any "hazardous substance" under California Health and Safety Code §§ 25316  
19 and 25317; and (5) all material identified as waste or sump material in site investigations  
20 conducted prior to the Effective Date of this Consent Decree, irrespective of whether it is  
21 classified as a hazardous substance, pollutant or contaminant, or solid waste under the above  
22 statutes.

23 "WDIG Site Trust" shall mean the trust established by certain other PRPs pursuant to the  
24 Consent Decree lodged in this Court in Civil Action No. 03-1593-SVW. The WDIG Site Trust  
25  
26  
27



1 shall be the covenantee of the Environmental Restriction Covenant.

2 "Work" shall mean all activities Settling Defendants are required to perform under this  
3 Consent Decree, except those required by Section XVI (Retention of Records).  
4

5 V. GENERAL PROVISIONS

6 4. Objectives of the Parties. The objectives of the Parties in entering into this  
7 Consent Decree are to protect public health or welfare or the environment at the Site by the  
8 implementation of institutional controls at the Site by the Settling Defendants, and to resolve the  
9 claims of Plaintiff against Settling Defendants as provided in this Consent Decree.  
10

11 5. Commitments by Settling Defendants.

12 a. Settling Defendants shall perform the Work in accordance with this  
13 Consent Decree and the Amended ROD, including, but not limited to, executing and recording  
14 an Environmental Restriction Covenant on Settling Defendants' Property at the Site, as required  
15 herein.  
16

17 b. The obligations of Settling Defendants to perform the Work are joint and  
18 several. In the event of the insolvency or other failure of any one or more Settling Defendants to  
19 implement the requirements of this Consent Decree, the remaining Settling Defendant shall  
20 complete all such requirements.

21 6. Compliance With Applicable Law. All activities undertaken by Settling  
22 Defendants pursuant to this Consent Decree shall be performed in accordance with the  
23 requirements of all applicable federal and state laws and regulations. Settling Defendants must  
24 also comply with all applicable or relevant and appropriate requirements of all federal and state  
25 environmental laws as set forth in the Amended ROD. The activities conducted pursuant to this  
26 Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.  
27

7. Permits.

1           a.       This Consent Decree is not, and shall not be construed to be, a permit  
2 issued pursuant to any federal or state statute or regulation.

3  
4           8.       Notice to Successors-in-Title.

5           a.       At least 30 days prior to the conveyance of any interest in property located  
6 within the Site including, but not limited to, fee interests, leasehold interests, and mortgage  
7 interests, the Settling Defendants shall give the successor-in-title written notice of (i) this  
8 Consent Decree, and (ii) the Environmental Restriction Covenant, attached as Appendix C,  
9 executed and recorded pursuant to Section VI (Access and Institutional Controls). At least 30  
10 days prior to such conveyance, Settling Defendants shall also give written notice to EPA of the  
11 proposed conveyance, including the name and address of the successor-in-title, and the date on  
12 which notice of the Consent Decree, and Environmental Restriction Covenant, was given to the  
13 successor-in-title.

14           b.       In the event of any such conveyance, the Settling Defendants' obligations  
15 under this Consent Decree, including, but not limited to, their obligations to abide by such  
16 land/water use restrictions, pursuant to Section VI (Access and Institutional Controls) of this  
17 Consent Decree, shall continue to be met by the Settling Defendants. In no event shall the  
18 conveyance release or otherwise affect the liability of the Settling Defendants to comply with all  
19 provisions of this Consent Decree, absent the prior written consent of EPA. If the United States  
20 approves, the successor-in-title may perform some or all of the Work under this Consent Decree.  
21

22  
23                               VI. ACCESS AND INSTITUTIONAL CONTROLS

24           9.       Settling Defendants shall:

25           a.       commencing on the date of lodging of this Consent Decree, provide the  
26 WDIG Site Trust and its agents and contractors, any PRPs conducting response actions at the  
27 Site, and the United States, and their representatives, including EPA and its contractors, with

1 access at all reasonable times to the Property, or such other property, for the purpose of  
2 conducting any response activity related to the Site including, but not limited to, the following  
3 activities:

4 (1) Monitoring of investigation, removal, remedial or other response  
5 actions at the Site;

6 (2) Verifying any data or information submitted to the United States;

7 (3) Conducting investigations relating to contamination at or near the  
8 Site;

9 (4) Obtaining samples;

10 (5) Assessing the need for, planning, or implementing additional  
11 response actions at or near the Site;

12 (6) Inspecting and copying records, operating logs, contracts, or other  
13 documents maintained or generated by Settling Defendants or their agents, consistent with  
14 Section XV (Access to Information);

15 (7) Assessing Settling Defendants' compliance with this Consent  
16 Decree;

17 (8) Determining whether the Site or other property is being used in a  
18 manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or  
19 pursuant to this Consent Decree.

20 (9) Installing, monitoring, and maintaining liquid, ground water, soil gas  
21 and other wells or probes; and

22 (10) Installing, monitoring, and operating any monitoring and extraction  
23 system, including liquids and gas extraction systems.

1           10.    Land/Water Use Restrictions:

2                   a.       Settling Defendants shall, commencing on the date of lodging of this  
3 Consent Decree, refrain from using the Site, or such other property, in any manner that would  
4 interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial  
5 measures implemented pursuant to the Amended ROD. Such restrictions include, but are not  
6 limited to:

7  
8                           (1)       Placement of warning signs or other posted information shall be  
9 allowed and, once posted, no removal or interference with such signs or information shall  
10 be permitted.

11                           (2)       Placement of site access controls, such as gates or fencing, shall be  
12 allowed and shall not be damaged or circumvented.

13  
14                           (3)       The Property shall not be used in any manner that may interfere  
15 with or affect the integrity of the remedial cap or other components of the remedy, as  
16 constructed pursuant to the Amended ROD.

17                           (4)       Construction not approved by EPA that impacts any of the  
18 remedial capping or other remedy components shall not occur.

19  
20                           (5)       No interferences with or alterations to the grading, vegetation and  
21 surface water and drainage controls shall be made.

22                           (6)       Portions of the Property underlain by Waste Materials and in soil  
23 gas noncompliance areas shall not be regraded.

24  
25                           (7)       Areas of asphalt or concrete pavement shall not be removed or  
26 improved.

27                           (8)       No penetrations or interferences (including but not limited to,

1 utility trench excavations, excavations for fence posts, excavations for planting trees or  
2 large bushes, foundation excavations, and foundation piles) with the remedial cap or any  
3 other areas with remedial controls shall be made.

4 (9) Deep-rooting plants (plants whose root systems will penetrate more  
5 than two feet below ground surface) shall not be planted.

6  
7 (10) Obtain approval from EPA for settings of irrigation controls in  
8 areas underlain by Waste Materials. Such settings shall not be changed without the prior  
9 written approval of EPA in accordance with Paragraph 10.b.

10 (11) Drainage channels and pipes shall not be blocked, rerouted or  
11 otherwise interfered with.

12  
13 (12) No new openings shall be made in building floor slabs in buildings  
14 located over Waste Materials or over soil gas noncompliance areas.

15 (13) Integrity of existing and future foundations shall be maintained in  
16 areas underlain by Waste Materials and in soil gas noncompliance areas. All cracks or  
17 damage in such foundations shall be reported to EPA and shall be repaired by Settling  
18 Defendants.

19  
20 (14) Indoor gas controls shall not be circumvented.

21 (15) Indoor gas sensors or alarms shall not be turned off or interfered  
22 with.

23  
24 (16) Soil gas control systems shall not be turned off or interfered with.

25 (17) Monitoring points, including but not limited to ground water  
26 monitoring wells, soil gas probes, reservoir leachate collection wells, soil gas vents, and  
27 survey monuments, shall not be blocked or otherwise obstructed.

1 (18) Monitoring wells shall not be opened; nothing shall be placed into  
2 the monitoring wells.

3 (19) Liquids recovery systems, liquids treatment systems, and treated  
4 liquids storage facilities shall not be turned off or interfered with.

5 (20) Groundwater supply or monitoring wells shall not be constructed.

6 (21) Settling Defendants shall disclose all land/water use restrictions to  
7 all tenants on the Property.

8 (22) Settling Defendants shall inform EPA of the identities of all  
9 tenants on the Property.

10 (23) During construction, excavation, or grading of any type, Settling  
11 Defendants shall take measures to ensure that there is no offsite migration of dust, odors  
12 or organic vapors. During such activities, Settling Defendants shall take appropriate  
13 measures to protect the health and welfare of onsite personnel and workers and to prevent  
14 offsite impacts.

15 (24) Settling Defendants must obtain prior written approval for all  
16 building or site modifications from EPA in accordance with Paragraph 10.b.

17 (25) Settling Defendants shall not excavate Waste Materials without the  
18 prior written approval of and supervision by EPA.

19 (26) No new construction shall occur without the prior written approval  
20 of EPA in accordance with Paragraph 10.b and the following requirements:

21 (a) New construction shall be supported by subsurface  
22 explorations and analytical laboratory data to characterize the construction area  
23 for the possible existence of Waste Materials.  
24  
25  
26  
27

1 (b) If Waste Materials are discovered in the construction area,  
2 they shall be remediated or buildings and structures must be appropriately  
3 designed to protect occupants.

4 (c) Appropriate worker and public health and safety  
5 precautions, including but not limited to dust control, safety plans, and other  
6 forms of worker protection, must be taken prior to approval of construction.  
7

8 (27) Boreholes, foundation piles, or other subsurface penetrations into  
9 the reservoir or any other area of the site which could create conduits allowing Waste  
10 Materials to migrate to groundwater shall not be made.

11 (28) Construction workers shall be provided with appropriate personal  
12 protective equipment while they are working at the Site.  
13

14 (29) Pesticides or herbicides shall not be applied to the capped areas of  
15 the site or to areas surrounding monitoring points.

16 (30) Use of any septic tanks on the property shall be discontinued and  
17 such tanks shall be decommissioned in accordance with local regulations.  
18

19 (31) The property shall not be used or redeveloped for residential use;  
20 use as a hospital, school for people aged 21 and under, or day care center; or other uses by  
21 sensitive receptors.

22 b. If Settling Defendants seek an exception to the land/water use restrictions  
23 in Paragraph 10.a, Settling Defendants shall obtain the prior written approval of EPA. Settling  
24 Defendants shall submit a request in writing to EPA, with all necessary supporting  
25 documentation (such documentation may include appropriate design documents, work plans,  
26 and/or calculations). EPA shall respond to such request within a reasonable time, by: 1)  
27 providing written approval for the exception; 2) requesting further information in support of the

1 request; 3) providing written approval of the exception with modification; or 4) denying the  
2 request. The decision of EPA shall be final and shall not be subject to the dispute resolution  
3 procedures of this Consent Decree or to judicial review.

4  
5 c. If Settling Defendants construct a new building or other permanent  
6 structure on the Property, or substantially modify an existing building or other permanent  
7 structure on the Property, and such modification requires a City of Santa Fe Springs building or  
8 other land use permit, Settling Defendants shall implement and maintain any necessary  
9 engineered capping system(s) and any necessary engineering control(s) related to the new or  
10 modified building or other permanent structure, in conformance with the provisions of the  
11 Amended ROD and as specified by EPA. Such capping system(s) and engineering control(s)  
12 shall be implemented only with the prior written approval of EPA.

13 11. Environmental Restriction Covenant:

14 a. Settling Defendants shall, within 30 days of entry of this Consent Decree,  
15 submit to EPA for review and approval with respect to the Property:

16  
17 (1) a current title insurance commitment or some other evidence of  
18 title acceptable to EPA, which shows title to the land described in the Environmental  
19 Restriction Covenant to be free and clear of all prior liens and encumbrances (except  
20 when those liens or encumbrances are approved by EPA or when, despite best efforts,  
21 Settling Defendants are unable to obtain release or subordination of such prior liens or  
22 encumbrances).

23 b. Settling Defendants shall provide a copy of the Environmental Restriction  
24 Covenant to the WDIG Site Trust for execution, at an address to be provided by EPA, prior to  
25 Settling Defendants' recordation of the fully executed Environmental Restriction Covenant.  
26

27 c. Within 15 days of EPA's approval and acceptance of the title evidence,  
Settling Defendants shall update the title search and, if it is determined that nothing has occurred



1 since the effective date of the commitment to affect the title adversely, execute and record an  
2 Environmental Restriction Covenant, in the form attached hereto as Appendix C, with the  
3 Recorder's Office of Los Angeles County. Within 30 days of recording the Environmental  
4 Restriction Covenant, Settling Defendants shall provide EPA with a final title insurance policy,  
5 or other final evidence of title acceptable to EPA, and a certified copy of the original recorded  
6 Environmental Restriction Covenant showing the clerk's recording stamps.

7  
8 d. If, after review of the final title insurance policy, or other final evidence of  
9 title, and the certified copy of the original recorded Environmental Restriction Covenant, EPA  
10 determines that any portion of the Work has not been completed in accordance with this Consent  
11 Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken  
12 by Settling Defendants pursuant to this Consent Decree to complete the Work, provided,  
13 however, that EPA may only require Settling Defendants to perform such activities pursuant to  
14 this Paragraph to the extent that such activities are consistent with the scope of the remedy  
15 selected in the Amended ROD. EPA will set forth in the notice a schedule for performance of  
16 such activities consistent with the Consent Decree. Settling Defendants shall perform all  
17 activities described in the notice in accordance with the specifications and schedules established  
18 therein, subject to their right to invoke the dispute resolution procedures set forth in Section X  
19 (Dispute Resolution).

20 e. If EPA concludes, based on its review of the final title insurance policy, or  
21 other final evidence of title, and the certified copy of the original recorded Environmental  
22 Restriction Covenant, that the Work has been performed in accordance with this Consent Decree,  
23 EPA will so certify in writing to Settling Defendants. Certification of Completion of the Work  
24 shall not affect Settling Defendants' obligations under this Consent Decree.

25  
26 12. If EPA determines that land/water use restrictions in the form of state or local  
27 laws, regulations, ordinances or other governmental controls are needed to implement the remedy  
selected in the Amended ROD, ensure the integrity and protectiveness thereof, or ensure non-

1 interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such  
2 governmental controls.

3  
4 13. Notwithstanding any provision of this Consent Decree, the United States retains  
5 all of its information gathering, inspection, and access authorities and rights, as well as all of its  
6 rights to require land/water use restrictions, including enforcement authorities related thereto,  
7 under CERCLA, RCRA and any other applicable statute or regulations.

## 8 VII. REMEDY REVIEW

9  
10 14. Periodic Review. Settling Defendants shall cooperate with the conduct of any  
11 studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of  
12 whether the Remedial Action is protective of human health and the environment at least every  
13 five years as required by Section 121(c) of CERCLA and any applicable regulations.

14 15. EPA Selection of Further Response Actions. If EPA determines, at any time, that  
15 the response actions undertaken pursuant to the Amended ROD are not protective of human  
16 health and the environment, EPA may select further response actions for the Site in accordance  
17 with the requirements of CERCLA and the NCP.

18  
19 16. Opportunity To Comment. Settling Defendants and, if required by Sections  
20 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on  
21 any further response actions proposed by EPA as a result of the review conducted pursuant to  
22 Section 121(c) of CERCLA and to submit written comments for the record during the comment  
23 period.

24 17. Modification of the Land Use Restrictions.

25 a. If EPA determines that modifications or additions to the land/water use  
26 restrictions are necessary to carry out and maintain the effectiveness of the remedy set forth in the  
27 Amended ROD, EPA may require that such modifications or additions be incorporated in the

1 land/water use restrictions, provided, however, that a modification or addition may only be  
2 required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy  
3 selected in the Amended ROD.

4           b.     If Settling Defendants object to any modification or addition determined  
5 by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to  
6 Section X (Dispute Resolution), Paragraph 26 (record review). The land/water use restrictions  
7 shall be modified in accordance with final resolution of the dispute.

8           c.     Settling Defendants shall implement any land/water use restrictions  
9 required by any modifications or additions incorporated in the land/water use restrictions in  
10 accordance with this Paragraph.

11           d.     Nothing in this Paragraph shall be construed to limit EPA's authority to  
12 require performance of further response actions as otherwise provided in this Consent Decree.  
13

14  
15                               VIII. REPORTING REQUIREMENTS

16           18.     All reports and other documents submitted by Settling Defendants to EPA which  
17 purport to document Settling Defendants' compliance with the terms of this Consent Decree shall  
18 be signed by an authorized representative of the Settling Defendants.  
19

20                               IX. FORCE MAJEURE

21           19.     "Force majeure," for purposes of this Consent Decree, is defined as any event  
22 arising from causes beyond the control of the Settling Defendants, or of any entity controlled by  
23 Settling Defendants, that delays or prevents the performance of any obligation under this Consent  
24 Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the  
25 Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to  
26 anticipate any potential force majeure event and best efforts to address the effects of any potential  
27 force majeure event (1) as it is occurring and (2) following the potential force majeure event,

1 such that the delay is minimized to the greatest extent possible. "Force Majeure" does not  
2 include financial inability to complete the Work.

3  
4 20. If any event occurs or has occurred that may delay the performance of any  
5 obligation under this Consent Decree, whether or not caused by a force majeure event, the  
6 Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's  
7 Alternate Project Coordinator or, in the event both of EPA's designated representatives are  
8 unavailable, the Director of the Superfund Division, EPA Region IX, within five (5) days of  
9 when Settling Defendants first knew that the event might cause a delay. Within five (5) days  
10 thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of  
11 the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to  
12 prevent or minimize the delay; a schedule for implementation of any measures to be taken to  
13 prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for  
14 attributing such delay to a force majeure event if they intend to assert such a claim; and a  
15 statement as to whether, in the opinion of the Settling Defendants, such event may cause or  
16 contribute to an endangerment to public health, welfare or the environment. The Settling  
17 Defendants shall include with any notice all available documentation supporting its claim that the  
18 delay was attributable to a force majeure. Failure to comply with the above requirements shall  
19 preclude Settling Defendants from asserting any claim of force majeure for that event for the  
20 period of time of such failure to comply, and for any additional delay caused by such failure.  
21 Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants,  
22 or any entity controlled by Settling Defendants knew or should have known.

23 21. If EPA agrees that the delay or anticipated delay is attributable to a force majeure  
24 event, the time for performance of the obligations under this Consent Decree that are affected by  
25 the force majeure event will be extended by EPA, for such time as is necessary to complete those  
26 obligations. An extension of the time for performance of the obligations affected by the force  
27 majeure event shall not, of itself, extend the time for performance of any other obligation. If  
EPA does not agree that the delay or anticipated delay has been or will be caused by a force

1 majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees  
2 that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in  
3 writing of the length of the extension, if any, for performance of the obligations affected by the  
4 force majeure event.

5  
6 22. If the Settling Defendants elect to invoke the dispute resolution procedures set  
7 forth in Section X (Dispute Resolution), they shall do so no later than 15 days after receipt of  
8 EPA's notice. In any such proceeding, Settling Defendants shall have the burden of  
9 demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or  
10 will be caused by a force majeure event, that the duration of the delay or the extension sought  
11 was or will be warranted under the circumstances, that best efforts were exercised to avoid and  
12 mitigate the effects of the delay, and that Settling Defendants complied with the requirements of  
13 Paragraphs 19 and 20, above. If Settling Defendants carry this burden, the delay at issue shall be  
14 deemed not to be a violation by Settling Defendants of the affected obligation of this Consent  
15 Decree identified to EPA and the Court.

#### 16 X. DISPUTE RESOLUTION

17  
18 23. Unless otherwise expressly provided for in this Consent Decree, the dispute  
19 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
20 under or with respect to this Consent Decree. However, the procedures set forth in this Section  
21 shall not apply to actions by the United States to enforce obligations of the Settling Defendants  
22 that have not been disputed in accordance with this Section.

23 24. Any dispute which arises under or with respect to this Consent Decree shall in the  
24 first instance be the subject of informal negotiations between the parties to the dispute. The  
25 period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless  
26 it is modified by written agreement of the parties to the dispute. The dispute shall be considered  
27 to have arisen when one party sends the other party a written Notice of Dispute.

1           25.    Statements of Position.

2           a.       In the event that the parties cannot resolve a dispute by informal  
3 negotiations under the preceding Paragraph, then the position advanced by EPA shall be  
4 considered binding unless, within 15 days after the conclusion of the informal negotiation period,  
5 Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on  
6 the United States a written Statement of Position on the matter in dispute, including, but not  
7 limited to, any factual data, analysis or opinion supporting that position and any supporting  
8 documentation relied upon by the Settling Defendants. The Statement of Position shall specify  
9 the Settling Defendants' position as to whether formal dispute resolution should proceed under  
10 Paragraph 26 or Paragraph 27.  
11

12           b.       Within 15 days after receipt of Settling Defendants' Statement of Position,  
13 EPA will serve on Settling Defendants its Statement of Position, including, but not limited to,  
14 any factual data, analysis, or opinion supporting that position and all supporting documentation  
15 relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal  
16 dispute resolution should proceed under Paragraph 26 or 27. Within 10 days after receipt of  
17 EPA's Statement of Position, Settling Defendants may submit a Reply.  
18

19           c.       If there is disagreement between EPA and the Settling Defendants as to  
20 whether dispute resolution should proceed under Paragraph 26 or 27, the parties to the dispute  
21 shall follow the procedures set forth in the paragraph determined by EPA to be applicable.  
22 However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the  
23 Court shall determine which paragraph is applicable in accordance with the standards of  
24 applicability set forth in Paragraphs 26 and 27.

25           26.       Formal dispute resolution for disputes pertaining to the selection or adequacy of  
26 any response action and all other disputes that are accorded review on the administrative record  
27 under applicable principles of administrative law shall be conducted pursuant to the procedures  
set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action

1 includes, without limitation: the adequacy of the performance of response actions taken pursuant  
2 to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute  
3 by Settling Defendants regarding the validity of the Amended ROD's provisions.

4           a.       An administrative record of the dispute shall be maintained by EPA and  
5 shall contain all statements of position, including supporting documentation, submitted pursuant  
6 to this Section. Where appropriate, EPA may allow submission of supplemental statements of  
7 position by the parties to the dispute.

8           b.       The Director of the Superfund Division, EPA Region IX, will issue a final  
9 administrative decision resolving the dispute based on the administrative record described in  
10 Paragraph 26.a. This decision shall be binding upon the Settling Defendants, subject only to the  
11 right to seek judicial review pursuant to Paragraph 26.c and d.

12           c.       Any administrative decision made by EPA pursuant to Paragraph 26.b.  
13 shall be reviewable by this Court, provided that a motion for judicial review of the decision is  
14 filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt  
15 of EPA's decision. The motion shall include a description of the matter in dispute, the efforts  
16 made by the parties to resolve it, the relief requested, and the schedule, if any, within which the  
17 dispute must be resolved to ensure orderly implementation of this Consent Decree. The United  
18 States may file a response to Settling Defendants' motion.

19           d.       In proceedings on any dispute governed by this Paragraph, Settling  
20 Defendants shall have the burden of demonstrating that the decision of the Superfund Division  
21 Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of  
22 EPA's decision shall be on the administrative record compiled pursuant to Paragraph 26.a.

23           27.       Formal dispute resolution for disputes that neither pertain to the selection or  
24 adequacy of any response action nor are otherwise accorded review on the administrative record  
25 under applicable principles of administrative law, shall be governed by this Paragraph.  
26  
27

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 25, the Director of the Superfund Division, EPA Region IX, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

28. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 35. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

## XI. STIPULATED PENALTIES

29. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 30 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section IX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree identified below in accordance with all applicable requirements of law and this Consent Decree



1 and within the specified time schedules established by and approved under this Consent Decree.

2  
3 30. Stipulated Penalty Amounts - Access and Institutional Controls.

4 a. The following stipulated penalties shall accrue per violation per day for  
5 any noncompliance identified in Subparagraph 30.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$200	15th through 30th day
\$500	31st day and beyond

12 b. Compliance Milestones.

13  
14 (1) Failure to execute and record the Environmental Restriction  
15 Covenant as required by Paragraph 11.

16 (2) Violation of land/water use restrictions listed in Paragraph 10.a.

17  
18 (3) Violation of access provisions of Paragraph 9.a.

19  
20 31. All penalties shall begin to accrue on the day after the complete performance is  
21 due or the day a violation occurs, and shall continue to accrue through the final day of the  
22 correction of the noncompliance or completion of the activity. However, stipulated penalties  
23 shall not accrue: (1) with respect to a decision by the Director of the Superfund Division, EPA  
24 Region IX, under Paragraph 26.b or 27.a of Section X (Dispute Resolution), during the period, if  
25 any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement  
26 of Position is received until the date that the Director issues a final decision regarding such  
27 dispute; or (2) with respect to judicial review by this Court of any dispute under Section X  
(Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt

1 of the final submission regarding the dispute until the date that the Court issues a final decision  
2 regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate  
3 penalties for separate violations of this Consent Decree.

4  
5 32. Following EPA's determination that Settling Defendants have failed to comply  
6 with a requirement of this Consent Decree, EPA may give Settling Defendants written  
7 notification of the same and describe the noncompliance. EPA may send the Settling Defendants  
8 a written demand for the payment of the penalties. However, penalties shall accrue as provided  
9 in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a  
10 violation.

11 33. All penalties accruing under this Section shall be due and payable to the United  
12 States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of  
13 the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section  
14 X (Dispute Resolution). All payments to the United States under this Section shall be paid by  
15 certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be  
16 mailed to Mellon BankEPA - Region 9, Attn: Superfund Accounting, P.O. Box 360863M,  
17 Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall  
18 reference the EPA Region and Site/Spill ID #09-C1, the DOJ Case Number 90-11-2-1000, and  
19 the name and address of the party making payment. Copies of checks paid pursuant to this  
20 Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided  
21 in Section XVII (Notices and Submissions), and to David Wood, Chief, Cost Accounting, U.S.  
22 EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105.

23 34. The payment of penalties shall not alter in any way Settling Defendants'  
24 obligation to complete the performance of the Work required under this Consent Decree.  
25

26 35. Penalties shall continue to accrue as provided in Paragraph 30 during any dispute  
27 resolution period, but need not be paid until the following:

1           a.       If the dispute is resolved by agreement or by a decision of EPA that is not  
2 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15  
3 days of the agreement or the receipt of EPA's decision or order;

4           b.       If the dispute is appealed to this Court and the United States prevails in  
5 whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to  
6 be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in  
7 Subparagraph c. below;

8           c.       If the District Court's decision is appealed by any Party, Settling  
9 Defendants shall pay all accrued penalties determined by the District Court to be owing to the  
10 United States into an interest-bearing escrow account within 60 days of receipt of the Court's  
11 decision or order. Penalties shall be paid into this account as they continue to accrue, at least  
12 every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent  
13 shall pay the balance of the account to EPA or to Settling Defendants to the extent that they  
14 prevail.  
15

16           36.     If Settling Defendants fail to pay stipulated penalties when due, the United States  
17 may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall  
18 pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made  
19 pursuant to Paragraph 32.  
20

21           37.     Nothing in this Consent Decree shall be construed as prohibiting, altering, or in  
22 any way limiting the ability of the United States to seek any other remedies or sanctions available  
23 by virtue of Settling Defendants' violation of this Consent Decree or of the statutes and  
24 regulations upon which it is based, including, but not limited to, penalties pursuant to Section  
25 122(l) of CERCLA, provided, however, that the United States shall not seek civil penalties  
26 pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is  
27 provided herein, except in the case of a willful violation of the Consent Decree.

1 38. Notwithstanding any other provision of this Section, the United States may, in its  
2 unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to  
3 this Consent Decree.

4  
5 **XII. COVENANTS NOT TO SUE BY PLAINTIFF**

6 39. In consideration of the actions that will be performed by the Settling Defendants  
7 under the terms of the Consent Decree, and except as specifically provided in Paragraphs 40, 41,  
8 and 43 of this Section, the United States covenants not to sue or to take administrative action  
9 against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site.  
10 With respect to future liability, these covenants not to sue shall take effect upon certification of  
11 the completion of the Remedial Action by EPA, which shall occur when Remedial Action for the  
12 Site has been completed. These covenants not to sue are conditioned upon: a) the satisfactory  
13 performance by Settling Defendants of their obligations under this Consent Decree; and b) the  
14 veracity of the information provided to EPA by Settling Defendants relating to Settling  
15 Defendants' involvement with the Site. These covenants not to sue extend only to the Settling  
16 Defendants and do not extend to any other person.

17 40. Plaintiff's Pre-certification Reservations. Notwithstanding any other provision of  
18 this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to,  
19 the right to institute proceedings in this action or in a new action, or to issue an administrative  
20 order seeking to compel Settling Defendants  
21

22 a. to perform further response actions relating to the Site, or  
23  
24 b. to reimburse the United States for additional costs of response if, prior to  
25 certification of completion of the Remedial Action:

26 (1) conditions at the Site, previously unknown to EPA, are discovered,  
27 or

1 (2) information, previously unknown to EPA, is received, in whole or  
2 in part,  
3 and EPA determines that these previously unknown conditions or information together with any  
4 other relevant information indicates that the Remedial Action is not protective of human health  
5 or the environment.  
6

7 41. Plaintiff's Post-certification Reservations. Notwithstanding any other provision  
8 of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice  
9 to, the right to institute proceedings in this action or in a new action, or to issue an administrative  
10 order seeking to compel Settling Defendants

11 a. to perform further response actions relating to the Site, or  
12  
13 b. to reimburse the United States for additional costs of response if,  
14 subsequent to certification of completion of the Remedial Action:

15 (1) conditions at the Site, previously unknown to EPA, are discovered,  
16  
17 or

18 (2) information, previously unknown to EPA, is received, in whole or  
19 in part,  
20 and EPA determines that these previously unknown conditions or this information together with  
21 other relevant information indicate that the Remedial Action is not protective of human health or  
22 the environment.  
23

24 42. For purposes of Paragraph 40, the information and the conditions known to EPA  
25 shall include only that information and those conditions known to EPA as of the date the  
26 Amended ROD was signed and set forth in the Amended Record of Decision for the Site and the  
27 administrative record supporting the Amended Record of Decision. For purposes of Paragraph  
41, the information and the conditions known to EPA shall include only that information and

1 those conditions known to EPA as of the date of certification of completion of the Remedial  
2 Action and set forth in the Amended Record of Decision, the administrative record supporting  
3 the Amended Record of Decision, the post-Amended ROD administrative record, or in any  
4 information received by EPA pursuant to the requirements of this Consent Decree prior to  
5 certification of completion of the Remedial Action.

6  
7 43. General reservations of rights. The United States reserves, and this Consent  
8 Decree is without prejudice to, all rights against Settling Defendants with respect to all matters  
9 not expressly included within Plaintiff's covenants not to sue. Notwithstanding any other  
10 provision of this Consent Decree, the United States reserves all rights against Settling Defendants  
11 with respect to:

12 a. claims based on a failure by Settling Defendants to meet a requirement of  
13 this Consent Decree;

14 b. liability arising from the past, present, or future disposal, release, or threat  
15 of release of Waste Material outside of the Site;

16  
17 c. liability for damages for injury to, destruction of, or loss of natural  
18 resources, and for the costs of any natural resource damage assessments;

19 d. criminal liability;

20  
21 e. liability for violations of federal or state law which occur during or after  
22 implementation of the Work; and

23 f. liability for the release or threat of release after the Effective Date of this  
24 Consent Decree of any Waste Material at the Site caused in whole or in part by the actions or  
25 inactions of Settling Defendants.  
26

27 44. Notwithstanding any other provision of this Consent Decree, the United States  
retains all authority and reserves all rights to take any and all response actions authorized by law.

1 XXII. COVENANTS BY SETTLING DEFENDANTS

2 45. Covenant Not to Sue. Subject to the reservations in Paragraph 46, Settling  
3 Defendants hereby covenant not to sue and agree not to assert any claims or causes of action  
4 against the United States with respect to the Site or this Consent Decree, including, but not  
5 limited to:

6  
7 a. any direct or indirect claim for reimbursement from the Hazardous  
8 Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507)  
9 through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

10 b. any claims against the United States, including any department, agency or  
11 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or  
12

13 c. any claims arising out of response actions at or in connection with the Site,  
14 including any claim under the United States Constitution, the California Constitution, the Tucker  
15 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at  
16 common law.

17 Except as provided in Paragraph 52 (Waiver of Claim-Splitting Defenses), these  
18 covenants not to sue shall not apply in the event that the United States brings a cause of action or  
19 issues an order pursuant to the reservations set forth in Paragraph 43 (b) - (c), but only to the  
20 extent that Settling Defendants' claims arise from the same response action, response costs, or  
21 damages that the United States is seeking pursuant to the applicable reservation.  
22

23 46. The Settling Defendants reserve, and this Consent Decree is without prejudice to,  
24 claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the  
25 United States Code, for money damages for injury or loss of property or personal injury or death  
26 caused by the negligent or wrongful act or omission of any employee of the United States while  
27 acting within the scope of his office or employment under circumstances where the United  
States, if a private person, would be liable to the claimant in accordance with the law of the place

1 where the act or omission occurred. However, any such claim shall not include a claim for any  
2 damages caused, in whole or in part, by the act or omission of any person, including any  
3 contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall  
4 any such claim include a claim based on EPA's selection of response actions, or the oversight or  
5 approval of the Settling Defendants' activities. The foregoing applies only to claims which are  
6 brought pursuant to any statute other than CERCLA and for which the waiver of sovereign  
7 immunity is found in a statute other than CERCLA.

8  
9 47. Nothing in this Consent Decree shall be deemed to constitute preauthorization of  
10 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.  
11 § 300.700(d).

12 XIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

13  
14 48. Nothing in this Consent Decree shall be construed to create any rights in, or grant  
15 any cause of action to, any person not a Party to this Consent Decree. The preceding sentence  
16 shall not be construed to waive or nullify any rights that any person not a signatory to this decree  
17 may have under applicable law. Each of the Parties expressly reserves any and all rights  
18 (including, but not limited to, any right to contribution), defenses, claims, demands, and causes  
19 of action which each Party may have with respect to any matter, transaction, or occurrence  
20 relating in any way to the Site against any person not a Party hereto.

21 49. The Parties agree, and by entering this Consent Decree this Court finds, that the  
22 Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions  
23 or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters  
24 addressed in this Consent Decree.

25 a. The "matters addressed" in this Consent Decree are all response actions  
26 taken or to be taken and all response costs incurred or to be incurred by the United States or any  
27 other person with respect to the Site. The "matters addressed" in this Consent Decree do not



1 include those response costs or response actions as to which the United States has reserved its  
2 rights under this Consent Decree (except for claims for failure to comply with this Consent  
3 Decree), in the event that the United States asserts rights against Settling Defendants coming  
4 within the scope of such reservations.

5       50. The Settling Defendants agree that with respect to any suit or claim for  
6 contribution brought by them for matters related to this Consent Decree they will notify the  
7 United States in writing no later than 60 days prior to the initiation of such suit or claim.  
8

9       51. The Settling Defendants also agree that with respect to any suit or claim for  
10 contribution brought against them for matters related to this Consent Decree they will notify in  
11 writing the United States within 10 days of service of the complaint on them. In addition,  
12 Settling Defendants shall notify the United States within 10 days of service or receipt of any  
13 Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a  
14 case for trial.

15       52. In any subsequent administrative or judicial proceeding initiated by the United  
16 States for injunctive relief, recovery of response costs, or other appropriate relief relating to the  
17 Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon  
18 the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or  
19 other defenses based upon any contention that the claims raised by the United States in the  
20 subsequent proceeding were or should have been brought in the instant case; provided, however,  
21 that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in  
22 Section XII (Covenants Not to Sue by Plaintiff).  
23

#### 24                                   XV. ACCESS TO INFORMATION

25       53. Settling Defendants shall provide to EPA, upon request, copies of all documents  
26 and information within their possession or control or that of their agents relating to activities at  
27 the Site or to the implementation of this Consent Decree. Settling Defendants shall also make

1 available to EPA, for purposes of investigation, information gathering, or testimony, its  
2 employees, agents, or representatives with knowledge of relevant facts concerning the  
3 implementation of this Consent Decree.

4           54.     Business Confidential and Privileged Documents.

5  
6           a.     Settling Defendants may assert business confidentiality claims covering  
7 part or all of the documents or information submitted to Plaintiff under this Consent Decree to  
8 the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C.  
9 § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential  
10 by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of  
11 confidentiality accompanies documents or information when they are submitted to EPA, or if  
12 EPA has notified Settling Defendants that the documents or information are not confidential  
13 under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public  
14 may be given access to such documents or information without further notice to Settling  
15 Defendants.

16           b.     The Settling Defendants may assert that certain documents, records and  
17 other information are privileged under the attorney-client privilege or any other privilege  
18 recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing  
19 documents, they shall provide the Plaintiffs with the following: (1) the title of the document,  
20 record, or information; (2) the date of the document, record, or information; (3) the name and  
21 title of the author of the document, record, or information; (4) the name and title of each  
22 addressee and recipient; (5) a description of the contents of the document, record, or information;  
23 and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other  
24 information created or generated pursuant to the requirements of the Consent Decree shall be  
25 withheld on the grounds that they are privileged.

26  
27           55.     No claim of confidentiality shall be made with respect to any data, including, but  
not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or

1 engineering data, or any other documents or information evidencing conditions at or around the  
2 Site.

3  
4 XVI. RETENTION OF RECORDS

5 56. Until 10 years after the Settling Defendants have caused the Environmental  
6 Restriction Covenant to be recorded, as required by Paragraph 11, Settling Defendants shall  
7 preserve and retain all non-identical copies of records and documents (including records or  
8 documents in electronic form) now in its possession or control or which come into their  
9 possession or control that relate in any manner to their liability under CERCLA with respect to  
10 the Site, provided, however, that Settling Defendants must retain, in addition, all documents and  
11 records that relate to the liability of any other person under CERCLA with respect to the Site.  
12 Each of the above record retention requirements shall apply regardless of any corporate retention  
13 policy to the contrary.

14 57. At the conclusion of this document retention period, Settling Defendants shall  
15 notify the United States at least 90 days prior to the destruction of any such records or  
16 documents, and, upon request by the United States, Settling Defendants shall deliver any such  
17 records or documents to EPA. The Settling Defendants may assert that certain documents,  
18 records and other information are privileged under the attorney-client privilege or any other  
19 privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall  
20 provide the Plaintiff with the following: (1) the title of the document, record, or information; (2)  
21 the date of the document, record, or information; (3) the name and title of the author of the  
22 document, record, or information; (4) the name and title of each addressee and recipient; (5) a  
23 description of the subject of the document, record, or information; and (6) the privilege asserted  
24 by Settling Defendants. However, no documents, reports or other information created or  
25 generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds  
26 that they are privileged.  
27

58. Each Settling Defendant hereby certifies individually that, to the best of its

1 knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed  
2 or otherwise disposed of any records, documents or other information (other than identical  
3 copies) relating to its potential liability regarding the Site since notification of potential liability  
4 by the United States regarding the Site and that it has fully complied with any and all EPA  
5 requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e)  
6 and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

7  
8 XVII. NOTICES AND SUBMISSIONS

9 59. Whenever, under the terms of this Consent Decree, written notice is required to be  
10 given or a report or other document is required to be sent by one Party to another, it shall be  
11 directed to the individuals at the addresses specified below, unless those individuals or their  
12 successors give notice of a change to the other Party in writing. All notices and submissions  
13 shall be considered effective upon receipt, unless otherwise provided. Written notice as specified  
14 herein shall constitute complete satisfaction of any written notice requirement of the Consent  
15 Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

16 As to the United States:

17 Chief, Environmental Enforcement Section  
18 Environment and Natural Resources Division  
19 U.S. Department of Justice  
20 P.O. Box 7611  
21 Washington, D.C. 20044-7611  
22 Re: DOJ # 90-11-2-1000

23 and

24 Director, Superfund Division  
25 United States Environmental Protection Agency  
26 Region IX  
27 75 Hawthorne St.  
San Francisco, CA 94105

28 As to EPA:

29 Russell Mechem  
30 EPA Project Coordinator  
31 United States Environmental Protection Agency  
32 Region IX  
33 75 Hawthorne St.  
34 San Francisco, CA 94105

1 As to the Regional Financial Management Officer:

2 David Wood, Chief, Cost Accounting  
3 United States Environmental Protection Agency  
4 Region IX  
5 75 Hawthorne St.  
6 San Francisco, CA 94105

7 As to the Settling Defendants:

8 Graziano Trust  
9 c/o Lula C. Graziano, Trustee  
10 12702 Biola Ave.  
11 La Mirada, CA 90638-2157

12 Los Nietos Property, LLC.  
13 c/o BaySierra Mortgage Inc.  
14 John M. Graziano, President  
15 1410 Neotomas Ave., Suite 106  
16 P.O.Box 1987  
17 Santa Rosa, CA 95402

18 Jovita L. Ortega  
19 14357 E. San Feliciano Dr.  
20 La Mirada, CA 90638-4339

21 XVIII. EFFECTIVE DATE

22 60. The effective date of this Consent Decree shall be the date upon which this  
23 Consent Decree is entered by the Court, except as otherwise provided herein.

24 XIX. RETENTION OF JURISDICTION

25 61. This Court retains jurisdiction over both the subject matter of this Consent Decree  
26 and the Settling Defendants for the duration of the performance of the terms and provisions of  
27 this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any  
time for such further order, direction, and relief as may be necessary or appropriate for the  
construction or modification of this Consent Decree, or to effectuate or enforce compliance with  
its terms, or to resolve disputes in accordance with Section X (Dispute Resolution) hereof.

1 XX. APPENDICES

2 62. The following appendices are attached to and incorporated into this Consent  
3 Decree:  
4

5 "Appendix A" is the Amended ROD.

6 "Appendix B" is the description and map of the Site.  
7

8 "Appendix C" is the Environmental Restriction Covenant.

9 "Appendix D" is the description and map of the Property owned by Settling Defendants.  
10

11 XXI. MODIFICATION

12 63. Schedules specified in this Consent Decree for completion of the obligations may  
13 be modified by agreement of EPA and the Settling Defendants. All such modifications shall be  
14 made in writing.  
15

16 64. Nothing in this Decree shall be deemed to alter the Court's power to enforce,  
17 supervise or approve modifications to this Consent Decree.  
18

19 XXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

20 65. This Consent Decree shall be lodged with the Court for a period of not less than  
21 thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of  
22 CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to  
23 withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or  
24 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.  
25 Settling Defendants consent to the entry of this Consent Decree without further notice.  
26

27 66. If for any reason the Court should decline to approve this Consent Decree in the  
form presented, this agreement is voidable at the sole discretion of any Party and the terms of the

1 agreement may not be used as evidence in any litigation between the Parties.

2  
3 XXIII. SIGNATORIES/SERVICE

4 67. The undersigned representative of each Settling Defendant to this Consent Decree  
5 and the Assistant Attorney General for the Environment and Natural Resources Division of the  
6 Department of Justice certifies that he or she is fully authorized to enter into the terms and  
7 conditions of this Consent Decree and to execute and legally bind such Party to this document.

8  
9 68. Settling Defendants hereby agree not to oppose entry of this Consent Decree by  
10 this Court or to challenge any provision of this Consent Decree unless the United States has  
11 notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

12 69. Each Settling Defendant shall identify, on the attached signature page, the name,  
13 address and telephone number of an agent who is authorized to accept service of process by mail  
14 on behalf of that Party with respect to all matters arising under or relating to this Consent Decree.  
15 Settling Defendants hereby agree to accept service in that manner and to waive the formal service  
16 requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local  
17 rules of this Court, including, but not limited to, service of a summons. The parties agree that  
18 Settling Defendants need not file an answer to the complaint in this action unless or until the  
19 court expressly declines to enter this Consent Decree.

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27

XXIV. FINAL JUDGMENT

70. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

71. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 23 DAY OF March, 2004



United States District Judge



1 THE UNDERSIGNED PARTIES enter into this Consent Decree with the Settling Defendants  
2 Graziano Trust, Los Nietos Property LLC., and Jovita L. Ortega, on behalf of the United States,  
3 in the matter of United States v. Brothers Machine & Tool, Inc., et al., relating to the Waste  
4 Disposal, Inc. Superfund Site.

5  
6 **FOR THE UNITED STATES OF AMERICA**  
7  
8

9 9.3.03  
10 Date

Tom Sansonetti  
11 Thomas Sansonetti  
12 Assistant Attorney General  
13 Environment and Natural Resources Division  
14 U.S. Department of Justice  
15 Washington, D.C. 20530

16 9-24-03  
17 Date

Cheryl Smout  
18 Cheryl Smout  
19 Environmental Enforcement Section  
20 Environment and Natural Resources Division  
21 U.S. Department of Justice  
22 P.O. Box 7611  
23 Washington, D.C. 20044-7611  
24  
25  
26  
27

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.  
2 Graziano Trust, Los Nietos Property LLC. and Jovita L. Ortega, relating to the Waste Disposal, Inc.  
3 Superfund Site.  
4  
5

6 8-5-03  
7 Date

Keith Takata  
Keith Takata  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne St.  
San Francisco, CA 94105

11  
12 July 29, 2003  
13 Date

Michele S. Benson  
Michele S. Benson  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne St., ORC-3  
San Francisco, CA 94105

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Graziano Trust, Los Nietos Property, LLC and Jovita L. Ortiz relating to the Waste Disposal, Inc. Superfund Site.

FOR Graziano Trust

Date

July 7, 2003

Signature:

*Lula C. Graziano* Trustee

Name (print):

LULA C. GRAZIANO

Title:

OWNER

Address:

12702 BIOLA AVE

LA MIRADA

CA 90638

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print):

LULA C. GRAZIANO

Title:

TRUSTEE

Address:

12702 BIOLA AVE

LA MIRADA

CA 90638

Phone No.

562-941-3672

FOR Jovita L. Ortega

7-5-2003  
Date

Signature: Jovita L. Ortega  
Name (print): JOVITA L. ORTEGA  
Title: Owner  
Address: 14357 San Feliciano Dr  
La Mirada CA  
90638

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): JOVITA L. ORTEGA  
Title: OWNER  
Address: 14357 SAN  
FELICIANO DR  
LA MIRADA CA  
90638  
Phone No. 562-941-2961

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Graziano Trust, Los Nietos Property, LLC and Jovita L. Orte relating to the Waste Disposal, Inc. Superfund Site.

FOR Los Nietos Property, LLC

7-7-03  
Date

Signature: [Signature]  
Name (print): J. M. Graziano.  
Title: Manager  
Address: 1410 Neotoma Ave  
#106  
Santa Rosa, CA.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): BAYSIERRA MORTGAGE INC.  
Title: J. M. GRAZIANO,  
Address: PRESIDENT  
1410 NEOTOMAS AVE  
#106  
SANTA ROSA, CA  
95405  
Phone No. 707-544-5696